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DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-216369 **DATE:** MARCH 5, 1985

MATTER OF: Donald G. Stitts - Payment for Services Performed Under Unexecuted IPA Agreement

DIGEST:

An employee of the University of Connecticut, who began a second Intergovernmental Personnel Act detail to the Department of Agriculture pursuant to an agreement which was never signed by the parties, may be considered to have served as a de facto employee. He is entitled to payment of the difference between his University salary, already paid to him, and the salary of the Federal position in which he served.

BACKGROUND

This decision is in response to the claim of Dr. Donald G. Stitts, an employee of the University of Connecticut, who is seeking payment for the difference between the salary of his position at the University and the salary of a position at the U.S. Department of Agriculture (USDA). He performed duties at the USDA from October 5, 1981, to February 24, 1982, pending approval of a second Intergovernmental Personnel Act (IPA) assignment agreement. We hold that Dr. Stitts may be considered to have performed those duties as a de facto employee and is entitled to compensation as determined by USDA within the guidelines discussed below.

The record shows that Dr. Stitts was detailed under an IPA agreement to the USDA Extension Service in Washington, D.C., and served under that agreement from July 21, 1980, through July 20, 1981, with an extension through September 19, 1981, so that he could attend a meeting in Atlanta.

The USDA submitted a second agreement to the University of Connecticut, covering the period from October 5, 1981, to July 20, 1982, but the University apparently delayed signing and returning the agreement to USDA. In the interim, USDA's policy regarding IPA assignments changed so that rather than reimbursing a detailing organization for the total salary and benefits of a

detailee, USDA would only reimburse a portion of those amounts. While this policy change would not have affected Dr. Stitts' entitlements under the IPA as discussed hereafter, it did reduce the amount payable from USDA to the University under a second IPA detail for Dr. Stitts.

Dr. Stitts' new agreement was never finalized, but he continued to perform the duties of his position from October 5, 1981, to February 24, 1982, while officials of the Extension Service sought an exception to the new policy. It appears that efforts to obtain an exception to the new policy and finalize a second IPA agreement ceased as of February 24, 1982, and Dr. Stitts performed no duties for the Extension Service thereafter. In a letter to the University of Connecticut dated June 29, 1982, the Acting Deputy Administrator of the Extension Service later stated that:

> "Dr. Stitts was aware of our activities during this time and understood that we might not be successful in obtaining this exception. However, we agreed that the activities in which he was engaged were of sufficient benefit to the Extension Services nationally as well as to his own program in the State of Connecticut that we would continue to pay his travel and maintenance expenses in connection with the time spent in Washington, D.C. We further structured the time spent in Washington, D. C. so that it would not conflict with Dr. Stitts' teaching commitments at the University of Connecticut."

Dr. Stitts claims that he is entitled to additional compensation for the period of the extension of his original contract and for the period he served while the Extension Service sought an exception to USDA's new rule. The University of Connecticut paid the salary he had been receiving in his teaching post so Dr. Stitts is claiming the difference between that amount and the salary of the position at USDA. For the period between July 20, 1981, and September 19, 1981, Dr. Stitts claims $1,470.29 representing the difference, on a pro rata basis, between the salary of the USDA position ($37,871) and his salary at the University ($29,376). For the period from October 5, 1981, to February 24, 1982, Dr. Stitts claims

$3,884.56 representing 80 percent of the difference, on a pro rata basis, between the salary of the USDA position ($39,689) and his salary at the University ($29,376). He claims only 80 percent since he was working part-time.

In an administrative report provided by the USDA, the agency states that the University of Connecticut was paid in full for the first IPA assignment as extended, covering the period ending September 19, 1981. With regard to the period covered by the proposed second agreement, USDA asks whether Dr. Stitts may be considered to have been a de facto employee and how payment should be made if he is found to be a de facto employee. The agency report states that the IPA assignment agreement has no mechanism for making payment directly to Dr. Stitts and that all payments are made through the University.

OPINION

In our decisions we have defined a de facto employee as an individual who performs the duties of a Federal office or position with apparent right and under color of authority, and we have held that such an individual could retain salary already received. 30 Comp. Gen. 228 (1950). In 52 Comp. Gen. 700 (1973) we extended the de facto rule to permit payment for the reasonable value of services to persons who served in good faith so as to allow such persons reimbursement for unpaid compensation. Although the majority of our cases in this area involve an improper or erroneous appointment, we have recognized that the lack of an appointment is no obstacle to de facto status and payment of unpaid compensation in cases where an individual has rendered services under color of authority and in good faith with the reasonable expectation of compensation. 55 Comp. Gen. 109 (1975).

We have applied these rules not only to individuals who were to be appointed in the regular civil service but also to consultants. In Earle W. Cook, B-198575, August 11, 1981, for instance, we held that an individual who performed services at the request of Department of Energy officials prior to the renewal of his appointment as a consultant could be compensated for the reasonable value of his services since he served as a de facto employee performing duties under color of authority and in good faith with the understanding that his appointment could be made retroactively.

Although Dr. Stitts' service was under the authority of the IPA, we believe he may be considered a de facto employee. He served under color of authority in that he was allowed to continue working by the officials who had supervised his previous IPA assignment. And although he knew that the agreement had not been approved when he began his duties, it appears that he continued to work in good faith with the reasonable expectation that the second agreement would be finalized eventually. Since the extension to his original contract had been made retroactively, Dr. Stitts could reasonably believe that the second assignment would also be made retroactively. Indeed, there is no reason to doubt that this would have been done if an exception to the new USDA policy had been granted or if USDA and the University could have resolved the reimbursement problem in some other way.

We have held that a de facto employee may be paid compensation equal to the reasonable value of the services he renders during the de facto period. 52 Comp. Gen. 700 (1973) and 55 Comp. Gen. 109 (1975). We have further ruled that the value of those services may be established at the rate of basic compensation set for the position to which the individual was appointed or was to be appointed. Keel and Hernandez, B-188424, March 22, 1977. Since the compensation of an individual on an IPA assignment varies according to the individual characteristics of that assignment, we must examine Dr. Stitts' assignment to determine what his entitlement would have been if his second agreement had been completed.

Under the IPA, an employee of a State or local government may be given a temporary appointment or may be assigned by detail to a Federal agency. Section 3374(c) of title 5, United States Code provides in part as follows concerning the compensation of individuals assigned by detail:

> "(c) During the period of assignment, a State or local government employee on detail to a Federal agency--
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> "(1) is not entitled to pay from the agency, except to the extent that the pay received from the State or local government is less than the appropriate rate of pay which the duties would warrant under the

> applicable pay provisions of this title or other applicable authority * * *."

The Federal Personnel Manual (FPM), Chapter 334, subchapter 4, provides more specifically that an employee assigned by detail to a Federal agency may be assigned to an established, classified position or may be given a set of ad hoc, unclassified duties. Dr. Stitts was assigned to a classified position as an Agriculture Extension Specialist, grade GS-14. With regard to the compensation of employees detailed to a classified position, paragraph 4-2c of FPM Chapter 334 provides as follows:

> "SUPPLEMENTAL PAY (1) An employee assigned by detail to a classified position in a Federal agency is entitled to earn the basic rate of pay which the duties of the assignment position would warrant under the applicable classification and pay provisions of the Federal agency. If the assignee's State or local salary is less than the minimum rate of pay for the Federal position, the agency must supplement the salary to make up the difference. Supplemental pay cannot be paid in advance or in a lump sum. It is not conditional on the completion of the full period of assignment. It may be paid directly to the employee or reimbursed to the State or local government. The supplemental payment may vary during the assignment as the assignee's regular salary varies and as revisions to the Federal pay plan occur."

With regard to the first IPA contract period, the USDA should determine the amount it has already reimbursed the University for payments made to Dr. Stitts, including an amount reflecting the difference between the two salaries. With regard to the second contract period, we note that Dr. Stitts has claimed 80% of the difference between the salaries, presumably because he worked part-time. In calculating his entitlement, the USDA should determine whether that percentage is an accurate reflection of the time he worked. Finally, in keeping with the Federal Personnel Manual, the USDA may pay Dr. Stitts directly the amounts it calculates in accordance with the guidelines we have set forth above.

Accordingly, we hold that for the period from October 1981, to February 1982, Dr. Stitts may be regarded as a de facto employee and may be paid such compensation as he would have received if his second IPA assignment had been properly approved.

for Milton J. Socolar
Comptroller General
of the United States